

Message Text

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ACTION AF-10

INFO OCT-01 IO-14 ISO-00 HA-05 CIAE-00 DODE-00 PM-05

H-02 INR-10 L-03 NSAE-00 NSC-05 PA-02 SP-02

SS-15 ICA-20 EUR-12 MCT-01 JUSE-00 /107 W

-----053835 182003Z /41

R 180645Z APR 78

FM AMCONSUL DURBAN

TO SECSTATE WASHDC 2892

INFO AMEMBASSY PRETORIA

AMCONSUL CAPE TOWN

AMCONSUL JOHANNESBURG

AMEMBASSY GENEVA

USMISSION USUN NEW YORK

UNCLAS DURBAN 0239

CAPE TOWN ALSO FOR EMBASSY

EO 11652: NA

TAGS: PINT, SHUM, SF

SUBJ: FATIMA MEER ON TRIAL FOR BREAKING BANNING ORDER

REF: 77 DURBAN 329

1. THE TRIAL OF NATAL UNIVERSITY LECTURER FATIMA MEER AND HER SON-IN-LAW BAPTISTE "BOBBY" MARIE ON CHARGES OF BREAKING THEIR BANNING ORDERS OPENED APRIL 14 IN DURBAN REGIONAL MAGISTRATE'S COURT. MEER AND MARIE ARE ACCUSED OF ATTENDING A "SOCIAL GATHERING", VIZ. A DINNER PARTY DECEMBER 22, 1977, WITH FIVE OTHER PERSONS, IN DIRECT VIOLATION OF A CLAUSE IN THEIR BANNING ORDERS. BOTH MEER AND MARIE PLEADED NOT GUILTY.

2. PROSECUTION RESTED CASE AFTER CALLING THREE WITNESSES, TWO OF WHOM WERE SECURITY POLICEMEN WHO RAIDED PARTY AND PHOTOGRAPHED MEER AND MARIE WITH OTHER GUESTS. DEFENSE ADVOCATE I.C. MOHAMED (WHO HAS BEEN ACTIVE IN A LARGE NUMBER OF TERRORISM UNCLASSIFIED

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TRIALS IN NATAL AND TRANSVAAL) THEN BEGAN UNIQUE DEFENSE WHICH COULD SET PRECEDENT FOR SUCH CASES. HE SAID MEER AND MARIE ADMITTED THEY WERE IN COMPANY OF OTHERS AT PARTY AND HAD ENGAGED IN SOCIAL AND CULTURAL DISCUSSIONS. HE PROCEEDED TO ARGUE, HOWEVER, THAT SINCE THE COURTS HAD NEVER AGREED UPON A DEFINITION OF A SOCIAL GATHERING, MEER AND MARIE COULD NOT KNOW WHETHER ATTENDING THIS PARTY CONTRAVENED THEIR BANNING ORDERS. HE

QUOTED NUMEROUS SUPREME COURT JUSTICES WHO IN DECISIONS OVER THE PAST TWENTY YEARS HAD EITHER CONTRADICTED ONE ANOTHER AS TO THE DEFINITION OF A GATHERING OR HAD ADMITTED THAT IT WAS IMPOSSIBLE TO DEFINE THE WORD SUFFICIENTLY NARROWLY TO DRAW THE LINE BETWEEN AN OFFENSE AND AN INNOCENT ACT. HE ALSO NOTED THAT SINCE GOD WAS SPECIFICALLY MENTIONED IN THE PREAMBLE TO THE SOUTH AFRICAN CONSTITUTION, AND SINCE "GOD WOULD NOT WANT FAMILIES TO BE SEPARATED", THE BANNING ORDERS WERE UNREASONABLE SINCE THEY COULD PRECLUDE MEER'S AND MARIE'S ATTENDANCE AT, FOR EXAMPLE, FAMILY BIRTHDAY OR WEDDING CELEBRATIONS. MAHOMED THEN CONTENDED THAT SINCE SOUTH AFRICAN LAW PERMITTED MAGISTRATES TO DECLARE ADMINISTRATIVE ACTS (INCLUDING A BANNING ORDER) NULL AND VOID IF THEY WERE VAGUE AND/OR UNREASONABLE, MARIE AND MEER SHOULD BE DISCHARGED SINCE THE PERTINENT SECTIONS OF THEIR BANNING ORDERS WERE BOTH VAGUE AND UNREASONABLE. THE MAGISTRATE WILL RULE ON THE DISCHARGE MOTION MAY 12.

3. COMMENT: MOHAMED TOLD A CONOFF ATTENDING THE TRIAL THAT HE EXPECTED TO LOSE THE CASE BUT WAS AIMING FOR A SUPREME COURT RULING AGAINST THE SECTION ON SOCIAL GATHERING IN ALL BANNING ORDERS. THIS, HE HOPED, WOULD NOT ONLY OVERTURN MEER'S AND MARIE'S EXPECTED CONVICTION BUT ALSO SET A PRECEDENT FOR SUCH CASES IN THE FUTURE.FARBER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TRIALS, COURT PROCEEDINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 18 apr 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978DURBAN00239
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780166-0413
Format: TEL
From: DURBAN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780446/aaaabmxv.tel
Line Count: 85
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 789c07ac-c288-dd11-92da-001cc4696bcc
Office: ACTION AF
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 77 DURBAN 329
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2937033
Secure: OPEN
Status: NATIVE
Subject: FATIMA MEER ON TRIAL FOR BREAKING BANNING ORDER
TAGS: PINT, SHUM, SF, (MEER, FATIMA), (MARIE, BOBBIE)
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/789c07ac-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014